

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 5:09-CT-3123-BO

MICHAEL LEWIS WHITE,
Plaintiff,

v.

OFFICER B.D. GREENWOOD, et al.,
Defendants.

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ORDER


On July 27, 2009, plaintiff filed a civil rights action pursuant to 42 U.S.C. § 1983. The undersigned allowed the matter to proceed after a frivolity review. 28 U.S.C. § 1915. Thereafter, on March 16, 2011, a motion to dismiss and an answer were filed by defendants (D.E. # 21, 22, and 23). On April 13, 2011, plaintiff filed a motion for voluntary dismissal without prejudice (D.E. # 26). Defendants responded to the motion for voluntary dismissal, and the matter is ripe for determination (D.E. # 27).

An action may be dismissed voluntarily by a plaintiff without order of the court by filing a notice of dismissal at any time before service by the adverse party of an answer or a motion for summary judgment. See Fed. R. Civ. P. 41(a)(1). Otherwise, an action shall not be dismissed on the plaintiff's request except upon order of the court. See Fed. R. Civ. P. 41(a)(2).

Rule 41(a)(2) permits voluntary dismissal upon such terms and conditions that the court deems proper. A motion under Rule 41(a)(2) should not be denied absent "legal" or "substantial" prejudice to defendants. See Ellett Brothers, Inc. v. U.S. Fidelity and Guar. Co., 275 F.3d 384, 388 (4th Cir. 2001); Ohlander v. Larson, 114 F.3d 1531, 1537 (10th Cir. 1997); Andes v. Versant Corp., 788 F.2d 1033, 1036 (4th Cir. 1986). Furthermore, the district court has

broad discretion in deciding a 41(a)(2) motion. Davis v. USX Copr., 819 F.2d 1270, 1273 (4th Cir. 1987). Factors often considered include: (1) defendant's effort and expense in preparing for trial, 2) excessive delay or lack of diligence on plaintiff's part, 3) insufficient explanation of the need for a dismissal, and 4) the current stage of litigation. Lang v. Manufacturers & Traders Trust Co., ____ F. Supp. ____, 2011 WL 1195614 at *5 (D. Md. March 24, 2011). As stated by defendants, the litigation "is unquestionably at an early stage." The request for the dismissal was also done quickly and defendants do not object. Defendants do request that if a subsequent action is filed, plaintiff be required to pay taxable costs. The request for cost for a future lawsuit is denied at this time. This does not bar defendants from requesting such at a later date.

The motion for voluntary dismissal without prejudice is ALLOWED (D.E. # 26), and the motion to dismiss (D.E. # 21) is DISMISSED as MOOT. The Clerk is DIRECTED to close the case. SO ORDERED, this the ~~6~~ ^{December} day of ~~November~~ 2011.


TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE